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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (optional)	
MAK-104US	

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office on	Application Number	Filed
Date: March 27, 2008	10/610,955	July 1, 2003
Signature Christine Clarke-Robinson	First Named Inventor: David MYR	
Typed/Printed Name CHRISTINE CLARKE-ROBINSON	Art Unit: 3629	Examiner: Naresh Vig

Applicant requests review of the non-final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor

☐ assignee of record of the entire interest

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed

☒ Attorney or Agent of Record.

Registration Number 34,515

☐ Attorney or Agent acting Under 37 CFR 1.34

Registration Number if acting under 37 CFR 1.34 _____

Signature

Lawrence E. Ashery

Typed or Printed Name

610-407-0700

Telephone Number

3/27/08

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 of forms are submitted

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C, 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P. O. Box 1450, Alexandria, VA 22323-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.**

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Claims 1 - 12 have been rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner asserts that the claims do not produce concrete results because "the user is required to program the computer system to generate the result they desire.... Two user using applicant's invention can program the device differently which will produce different results even when they use the same data." Applicant respectfully disagrees. Claim 1 recites: a "computer-implemented method for appraising a real estate property," "storing influence factors and a range of influence factor values," performing nonlinear programming "according to the stored influence factors and the stored range of influence factor values" and "providing signals indicative of an optimal range of appraisal values." Claim 12 includes a similar recitation. Thus, concrete and tangible results are provided. Accordingly, Applicant respectfully requests that the rejection of claims 1 - 12 under 35 U.S.C. § 101 be withdrawn.

Claims 1 - 12 have been rejected under 35. U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, it is asserted that the limitation "performing nonlinear programming with a predetermined nonlinear objective function" is not supported by the disclosure originally filed July 1, 2003. Applicant respectfully disagrees. Support for this feature can be found, for example, at p. 8, line 1 - p. 9, line 3 of the specification originally filed July 1, 2003. In addition, Applicant notes that "nonlinear programming" was recited in the claims as originally filed. Applicant also notes that that it is well established that the subject matter of the claims need not be described literally in order for the disclosure to satisfy the description requirement. See MPEP § 2163.02. Accordingly, Applicant respectfully requests that the rejection of claims 1 - 12 under 35 U.S.C. § 112, first paragraph, be withdrawn.

Claims 1 - 12 have been rejected under 35 U.S.C. § 112, second paragraph, as being vague and indefinite. In particular, the Examiner asserts that it is not clear "whether performing of nonlinear programming is actually programming the computer, or, it is inputting of property related data in the computer which is already has nonlinear program." The Examiner also asserts that it is "not clear whether calculator performs limitations as recited, or, it is applicant's intention on how the calculator will be used." Applicant respectfully disagrees.

Claim 1 recites a computer-implemented method and that nonlinear programming is performed with a predetermined nonlinear objective function, according to stored influence factors and a stored range of influence factor values. Claim 12 includes a similar recitation.

Based on the description on p. 11, line 11 - p. 16, line 4 (of the substitute specification filed on October 14, 2003), the skilled person would understand that nonlinear programming is used with 1) a predetermined nonlinear objective function that incorporates each of different types of appraisal approaches, 2) stored influences factors and 3) a stored range of influence factor values. In particular, the skilled person would understand that nonlinear programming is performed using the nonlinear objective function and the stored factors/range of values to determine an optimal range of appraisal values by taking into account each of the different types of appraisal approaches in the nonlinear objective function. Accordingly, Applicant respectfully requests that the rejection of claims 1 - 12 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Claims 1 - 12 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins (US Pub. No. 2001/0039506) in view of "Modern Real Estate Practice" by Galaty et al. This ground for rejection is respectfully traversed for the reasons set forth below.

Claim 1 includes features neither disclosed nor suggested by the cited art, namely:

> b) performing nonlinear programming with a predetermined nonlinear objective function that uses each of the different types of appraisal approaches according to the stored influence factors and the stored range of influence factor values...
>
> c) providing signals indicative of an optimal range of appraisal values for the real estate property from the performed nonlinear programming according to each of the different types of appraisal approaches...
>
> ...each of the different types of appraisal approaches are a sales comparison approach, an income capitalization approach and a cost approach... (Emphasis Added)

Robbins discloses a real estate appraisal method for estimating the value of real estate property. In paragraph [0080], Robbins discloses that an appraiser generally considers the cost approach, the income approach and the sales comparison approach. However, Robbins discloses that the real estate appraisal method is performed through the sales comparison approach (paragraphs [0076] and [0080]). As shown in FIG. 5, Robbins uses regression analysis in order to determine the sales condition model (paragraphs [0137 - 0138]).

As acknowledged by the Examiner, Robbins does not disclose or suggest that a sales comparison approach and income capitalization approach and a cost approach are each used in

a predetermined objective function in order to provide an optimal range of appraisal values for a real estate property, as required by claim 1. In addition, Robbins does not disclose or suggest Applicant's claimed features of "performing nonlinear programming with a predetermined nonlinear objective function that uses each of the different types of appraisal approaches according to the stored influence factors and the stored range of influence factor values" (emphasis added). Robbins is silent regarding the use of nonlinear programming with a nonlinear objective function. Instead, Robbins uses linear regression to determine a sales condition model. Thus, Robbins does not include all of the features of claim 1.

Galaty et al. disclose that appraisers traditionally use the sales comparison approach, the cost approach and the income approach, where the three methods serve as checks against each other (p. 304, last paragraph). On p. 305, first paragraph - p. 312, first paragraph, Galaty et al. disclose linear calculations for separately appraising property by each of the three methods. On p. 312, second - fourth paragraphs, Galaty et al. disclose that, for reconciliation, an appraisal value is separately determined by each of the three methods and then a weighted average is used to generate a "single estimate of market value" (emphasis added).

Galaty et al. do not disclose or suggest Applicant's claimed features of "performing nonlinear programming with a predetermined nonlinear objective function that uses each of the different types of appraisal approaches" or "providing signals indicative of an optimal range of appraisal values for the real estate property from the performed nonlinear programming" (emphasis added). These features are neither disclosed nor suggested by Galaty et al. Instead, Galaty et al. disclose computing three separate appraisal values and applying a weighted average to generate a single appraisal value. Galaty et al. is silent on performing nonlinear programming with a predetermined nonlinear objective function that uses each of the three types of appraisal approaches. Thus, Galaty et al. do not include all of the features of claim 1 and do not make up for the deficiencies of Robbins. Accordingly, allowance of claim 1 is respectfully requested.

Claims 2 - 11 include all of the features of claim 1 from which they depend. Accordingly, claims 2 - 11 are also patentable over the sited art.

Although not identical to claim 1, claim 12 includes similar features that are neither disclosed nor suggested by the cited art. Namely, a calculator for performing nonlinear programming with a predetermined nonlinear objective function that uses each of the different

types of appraisal approaches and determining an optimal range of appraisal values from the nonlinear programming according to each of the different types of appraisal approaches, where the different types of appraisal approaches are a sales comparison approach, an income capitalization approach and a cost approach. As discussed above, these features are neither disclosed nor suggested by the cited art. Thus, the cited art do not include all of the features of claim 12. Accordingly, allowance of claim 12 is respectfully requested.

In view of the arguments set forth above, the above-identified application is in condition for allowance which action is respectfully requested.

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